



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 500
DENVER, CO 80202-2466
<http://www.epa.gov/region08>

September 12, 2006

Ref: 8ENF-L

CERTIFIED MAIL:
RETURN RECEIPT REQUESTED

George Berg, President
Nodak Electric Cooperative, Inc.
4000 32nd Avenue South
Grand Forks, ND 58201

Re: Complaint and Notice of
Opportunity for Hearing,
Docket No. **TSCA-08-2006-0004**

Dear Mr. Berg:

Enclosed is an administrative complaint seeking penalties for violation by Nodak Electric Cooperative, Inc. ("Respondent") of certain requirements under the Toxic Substances Control Act ("TSCA") and its implementing regulations.

Complaint and Notice of Opportunity for Hearing

Respondent is hereby served with a Complaint and Notice of Opportunity for Hearing (referred to as the "Complaint") issued under the authority of Section 16(a) of TSCA, 15 U.S.C. Section 2615(a). Enclosed with this Complaint are the Consolidated Rules of Practice, EPA's Polychlorinated Biphenyls (PCB) Penalty Policy, the Penalty Calculation Justification, and the PCB Civil Penalty Calculation Worksheet, which are referenced in the Complaint.

The U.S. Environmental Protection Agency ("EPA") alleges in the Complaint that Respondent failed to comply with Section 15 of TSCA, 15 U.S.C. Section 2614, by violating TSCA's implementing regulation set forth at 40 C.F.R. Section 761.205(f). This provision requires that a PCB waste handler renotify EPA of its PCB waste activity within 30 days after changing the location of its facility.

By law, the Respondent has the right to request a hearing regarding the matters set forth in this Complaint. The Respondent is encouraged to pay particular attention to the part of the Complaint entitled "Opportunity to Request a Hearing." If the Respondent does not respond to this Complaint within thirty (30) days of receipt, a Default Judgment may be entered and the proposed civil penalty may be



assessed without further proceedings. In its Answer, the Respondent may request a hearing. It has the right to be represented by an attorney at any stage of these proceedings.

Whether or not the Respondent requests a hearing, it may confer informally with EPA concerning the alleged violations or the amount of the proposed civil penalty. The Respondent may wish to be represented by counsel during any settlement conference. EPA encourages all parties against whom it files a complaint such as this to pursue the possibility of settlement. Any such settlement shall be memorialized in a written Consent Agreement, followed by the issuance of a Final Order by the Regional Judicial Officer, U.S. EPA-Region 8. The signature of a representative of the Respondent on a Consent Agreement shall constitute a waiver of the Respondent's right to request a hearing on any matter to which it has stipulated in the Consent Agreement.

A request for an informal conference does not extend the thirty-day period during which the Respondent must submit its written Answer and request for hearing. The informal conference procedure may be pursued simultaneously with the adjudicatory hearing.

EPA Contact

If the Respondent has any legal questions or would like to discuss the possibility of settlement, please contact:

Jessie Goldfarb (8ENF-L)
Senior Enforcement Attorney
U.S. EPA-Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466
(303) 312-6926.

EPA has agreed to notify small businesses of their right to comment on regulatory enforcement activities at the time of an Agency enforcement activity pursuant to the Small Business Regulatory Enforcement and Fairness Act ("SBREFA"). SBREFA does not eliminate responsibility to comply with TSCA, nor does it create any new rights or defenses under law. A SBREFA information sheet containing further information on compliance assistance resources and tools available to small businesses is enclosed with this letter.

EPA urges Respondent's prompt attention to these matters.

Sincerely,

SIGNED

Martin Hestmark, Director
Technical Enforcement Program
Office of Enforcement, Compliance,
and Environmental Justice

SIGNED

David J. Janik,
Supervisory Enforcement Attorney
Office of Enforcement, Compliance,
and Environmental Justice

Enclosures:

1. Complaint and Notice of Opportunity for Hearing
2. Consolidated Rules of Practice
3. EPA's Polychlorinated Biphenyl (PCB) Penalty Policy
4. Penalty Calculation Justification
5. PCB Civil Penalty Calculation Worksheet
6. SBREFA Information Sheet

cc w/ Enclosure 1:

Kim Le, 8ENF-AT
Jessie Goldfarb, 8ENF-L

UNITED STATES

ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF:)	
)	
NODAK ELECTRIC COOPERATIVE,)	DOCKET NO.
INC.)	
4000 32 nd AVENUE SOUTH)	COMPLAINT AND NOTICE OF
GRAND FORKS, ND 58201,)	OPPORTUNITY FOR HEARING
)	
Respondent.)	

STATUTORY AUTHORITY

This civil administrative Complaint and Notice of Opportunity for Hearing (referred to as the "Complaint") is issued pursuant to Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. Section 2615(a). United States Environmental Protection Agency ("EPA") regulations governing polychlorinated biphenyls ("PCBs") are set forth at 40 C.F.R. Part 761. Violations of these regulations constitute violations of Section 15 of TSCA, 15 U.S.C. Section 2614. This proceeding is subject to EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" ("Consolidated Rules of Practice"), 40 C.F.R. Part 22, a copy of which is enclosed. The undersigned EPA officials have been properly delegated the authority to issue this Complaint and Notice of Opportunity for Hearing ("Complaint"). EPA alleges that Respondent has violated Section 15 of TSCA, 15 U.S.C. Section 2614, and proposes the assessment of a civil

penalty as more fully explained below.

GENERAL ALLEGATIONS

The following general allegations apply to and are incorporated by reference into Count 1 of this Complaint:

1. EPA has jurisdiction of this matter under Section 16 of TSCA, 15 U.S.C. Section 2615.

2. Respondent is Nodak Electric Cooperative, Inc. ("Respondent").

3. At all times relevant to this action, Respondent was a corporation organized under the State of North Dakota.

4. At all times relevant to this action, Respondent was a "person" as defined by 40 C.F.R. Section 761.3, and thus subject to regulation.

5. At all times relevant to this action, Respondent was the owner and operator of a facility located at 4000 32nd Avenue South, Grand Forks, North Dakota.

6. On May 18, 2006, Conrad Carlson, an authorized inspector for the North Dakota Department of Health ("Inspector"), conducted an inspection of Respondent's facility located at 4000 32nd Avenue South, with the consent of a representative of Respondent, Line Superintendent Ken Quanrud, to determine compliance with TSCA and its implementing regulations.

7. At the beginning of the inspection referenced in Paragraph 6, above, the Inspector issued notices of inspection and confidentiality to Mr. Quanrud. Mr. Quanrud accompanied the Inspector during the inspection.

8. During the inspection referenced in Paragraph 6, above, the Inspector observed General Electric PCB Transformer, Serial Number B394021, which contained 998 ppm of PCBs, in the secondary containment of the PCB-marked storage area.

9. During the inspection referenced in Paragraph 6, above, Mr. Quanrud provided the Inspector with an Annual Document Log for the January 1-December 31, 2004 timeframe, listing PCB Items and their disposal dates, among other things.

10. At all times relevant to this action, the facility referenced in Paragraph 5, above, was used for the storage of PCBs and PCB Items designated for disposal.

11. At all times relevant to this action, the facility referenced in Paragraph 5, above, was a PCB storage facility subject to the storage requirements of 40 C.F.R. Section 761.65(b).

12. Annual reports filed by Respondent with the North Dakota Secretary of State show that Respondent moved its facility from 1405 1st Avenue North, to 4000 32nd Avenue South, in Grand Forks, North Dakota, between March 31, 1996 and March 31, 1997.

13. During the inspection referenced in Paragraph 8, above, Mr. Quanrud was unable to provide the Inspector with any documentation showing that Respondent had notified EPA of an address change for its facility.

14. On August 22, 2006, EPA Environmental Engineer Kim Le sent an e-mail to Mr. Quanrud requesting: (1) any paperwork showing the EPA identification number obtained by the facility under 40 C.F.R. Section 761.202; and (2) a copy of EPA Form 7710-53 notifying EPA

of the facility's PCB waste activities under 40 C.F.R. Section 761.205.

15. In an e-mail response to the e-mail request referenced in Paragraph 14, above, Mr. Quanrud listed EPA identification number NDD986266229, and stated that he could not locate any forms associated with that identification number.

16. An August 23, 2006 review of EPA's PCBs Activity Database System (PADS) by EPA Environmental Engineer Dan Bench showed that on or about January 16, 1990, Respondent, with EPA identification number NDD986266229, had filed a Notification of PCB Activity form for its facility, then located at 1405 1st Avenue North, Grand Forks, North Dakota.

17. On August 22, 2006, Mr. Quanrud faxed Ms. Le a July 18, 2006 letter from Tony Baney, Chief of the Fibers and Organics Branch, Office of Prevention, Pesticides and Toxic Substances, U.S. EPA Headquarters to Mr. Quanrud, acknowledging Mr. Quanrud's filing of a Notification of PCB Activity form, dated May 18, 2006, for Respondent's facility located at 4000 32nd Avenue South, in Grand Forks, North Dakota.

STATUTORY AND REGULATORY FRAMEWORK

The following items apply to and are incorporated by reference into Count 1 of this Complaint:

18. 40 C.F.R. Section 761.3 defines "PCBs" as "any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contains such substance."

19. 40 C.F.R. Section 761.3 defines "PCB Waste(s)" as "those PCBs or PCB Items that are subject to the disposal requirements of subpart D of this part".

20. 40 C.F.R. Section 761.3 defines "PCB Item" as "any PCB Article, PCB Article Container, PCB Container, PCB Equipment, or anything that deliberately or unintentionally contains or has as a part of it any PCB or PCBs".

21. 40 C.F.R. Section 761.3 defines "disposal" as "intentionally or accidentally to discard, throw away, or otherwise complete or terminate the useful life of PCBs and PCB Items. Disposal includes spills, leaks, and other uncontrolled discharges of PCBs as well as actions related to containing, transporting, destroying, degrading, decontaminating, or confining PCBs and PCB Items."

22. 40 C.F.R. Section 761.3 defines "Generator of PCB Waste" as "any person whose act or process produces PCBs that are regulated for disposal under subpart D of this part, or whose act first causes PCBs or PCB Items to become subject to the disposal requirements of subpart D of this part, or who has physical control over the PCBs when a decision is made that the use of the PCBs has been terminated and therefore is subject to the disposal requirements of subpart D of this part".

23. 40 C.F.R. Section 761.205(c)(2) requires that Generators of PCB waste who use, own, service, or process PCBs or PCB Items notify EPA of their PCB waste activities if they own or operate PCB storage facilities subject to the storage requirements of 40 C.F.R. Section 761.65(b).

24. 40 C.F.R. Section 761.65(b) requires that, except as

provided in paragraphs (b) (2), (c) (1), (c) (7), and (c) (10) of that section, after July 1, 1978, owners or operators of any facilities used for the storage of PCBs and PCB Items designated for disposal comply with the enumerated storage unit requirements.

25. 40 C.F.R. Section 761.205(c) (2) (I) requires that Generators storing PCB waste subject to the storage requirements of 40 C.F.R. Section 761.65(b) notify EPA by filing EPA Form 7710-53 with EPA no later than April 4, 1990.

26. 40 C.F.R. Section 761.205(f) requires that when a facility has previously notified EPA of its PCB waste handling activities using Form 7710-53 and those activities change, the facility must resubmit EPA form 7710-53 to reflect those changes no later than 30 days from when a change is made. Examples of when a PCB waste handler must renotify the Agency include when the company changes the location of its facility.

DESCRIPTION OF VIOLATIONS

COUNT 1

27. Respondent moved its facility from 1405 1st Avenue North, to 4000 32nd Avenue South, in Grand Forks, North Dakota, between March 31, 1996 and March 31, 1997.

28. Respondent renotified EPA of its PCB waste activity on May 18, 2006.

29. Respondent's failure to renotify EPA of its PCB waste activity within 30 days after changing the location of its facility, as required by 40 C.F.R. Section 761.205(f), constitutes a violation

of Section 15 of TSCA, 15 U.S.C. Section 2614.

PROPOSED CIVIL PENALTY

The proposed civil penalty has been determined in accordance with Section 16(a) of TSCA, 15 U.S.C. Section 2615(a). Section 16(a) of TSCA, 15 U.S.C. Section 2615(a), and 40 C.F.R. Part 19 authorize the assessment of a civil penalty of up to \$32,500 per day of violation for each violation of TSCA or its implementing regulations occurring after March 15, 2004. For purposes of determining the amount of any civil penalty to be assessed, Section 16(a)(1)(B), 15 U.S.C. 2615(a)(1)(B), requires EPA to take into account, in addition to such other factors as justice may require, the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, and the degree of culpability.

To develop the proposed penalty in this Complaint, Complainant has taken into account the particular facts and circumstances of this case with specific reference to EPA's Polychlorinated Biphenyls (PCB) Penalty Policy, dated April 9, 1990 (the "Penalty Policy"). This policy provides a rational, consistent and equitable calculation methodology for applying the statutory factors enumerated above to particular cases.

Based upon the facts alleged in this Complaint and upon the statutory factors enumerated above, as known to Complainant at this time, Complainant proposes that Respondent be assessed a penalty of **\$17,000** for the violations alleged in this Complaint. The Penalty

Policy, Penalty Calculation Justification, and PCB Civil Penalty Calculation Worksheet are enclosed with this Complaint and incorporated herein.

The Administrative Law Judge is not bound by EPA's Penalty Policy or the penalty proposed by Complainant, and may assess a penalty above the proposed amount, up to the maximum amount authorized by statute.

Payment of the penalty may be made by cashier's or certified check, payable to the "Treasurer, United States of America" and mailed to:

Regular Mail:

U.S. EPA-Region 8
Regional Hearing Clerk
Mellon Bank
Lockbox 360859
Pittsburgh, PA 15251-6859, or

Federal Express, Airborne, or other commercial carrier:

U.S. EPA-Region 8, 360859
Mellon Client Service Center, Room 154-0670
500 Ross Street
Pittsburgh, PA 15251-6959.

A copy of the check must be sent to the Regional Hearing Clerk and also to Jessie Goldfarb, Senior Enforcement Attorney, at the addresses provided below.

OPPORTUNITY TO REQUEST A HEARING

As provided by Section 16(a)(2)(A) of TSCA, 15 U.S.C. Section 2615(a)(2)(A), Respondent has the right to request a hearing on the issues raised in this Complaint. In the event that Respondent intends to request a hearing to contest any material fact set forth in the Complaint, or contends that the amount of the proposed penalty is inappropriate, or contends that it is entitled to a judgment as a

matter of law, Respondent must file a written Answer to this Complaint with the Regional Hearing Clerk at the following address:

Regional Hearing Clerk (8RC)
U.S. EPA-Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

An Answer must be filed within thirty (30) days of receipt of the Complaint. The Answer must clearly and directly admit, deny, or explain each factual allegation of the Complaint with regard to which Respondent has any knowledge. The Answer must also state: (1) the circumstances or arguments which are alleged to constitute the grounds of defense; (2) the facts which Respondent intends to place at issue; and (3) whether a hearing is requested. Hearings will be conducted in accordance with the Consolidated Rules of Practice.

If Respondent fails to file an Answer with the Regional Hearing Clerk within thirty (30) days of receipt of the Complaint, such failure shall constitute an admission of all facts alleged in the Complaint and a waiver of Respondent's right to a hearing under Section 16(a)(2)(A) of TSCA, 15 U.S.C. Section 2615(a)(2)(A). The proposed penalty shall become due and payable by Respondent, without further proceedings, sixty (60) days after a final order is issued upon default.

QUICK RESOLUTION

Respondent may resolve this proceeding at any time by paying the specific penalty set forth in the Complaint. Such action to make payment need not contain any response to, or admission of, the allegations set forth in the Complaint. Such action to make payment constitutes a waiver of Respondent's right to contest the allegations

and appeal the final order. See Section 22.18 of the Consolidated Rules of Practice for a full explanation of the quick resolution process.

SETTLEMENT NEGOTIATIONS

Whether or not Respondent requests a hearing, it may confer informally with EPA concerning the alleged violations or the amount of the proposed penalty. Respondent may wish to be represented by counsel at the informal conference. If a settlement is reached, it will be finalized by the issuance of a written Consent Agreement and Final Order by the Regional Judicial Officer, U.S. EPA-Region 8. To explore the possibility of settlement in this matter, contact:

Jessie Goldfarb (8ENF-L)
Senior Enforcement Attorney
U.S. EPA-Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466
(303) 312-6926.

Please note that a request for an informal settlement conference does not extend the thirty-day period for filing a written Answer and requesting a hearing.

**U.S. ENVIRONMENTAL PROTECTION AGENCY-
REGION 8, Complainant**

9/12/06
Date

SIGNED
Martin Hestmark, Director
Technical Enforcement Program
Office of Enforcement, Compliance, and
Environmental Justice

12 September 2006
Date

SIGNED
David J. Janik
Supervisory Enforcement Attorney
Legal Enforcement Program
Office of Enforcement, Compliance, and
Environmental Justice

9/11/06
Date

SIGNED
Jessie Goldfarb
Senior Enforcement Attorney
Legal Enforcement Program
Office of Enforcement, Compliance, and
Environmental Justice

IN THE MATTER OF:
DOCKET NO.:

Nodak Electric Cooperative, Inc.
TSCA-08-2006-0004

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the attached COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING was hand-carried to the Regional Hearing Clerk, EPA-Region 8, 999 18th Street, Denver, Colorado, and that a true copy of the same was sent via Certified Mail: Return Receipt Requested to:

George Berg, President
Nodak Electric Cooperative, Inc.
4000 32nd Avenue South
Grand Forks, ND 58201

9/12/06
Date

SIGNED
Judith McTernan

IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS PLEASE CONTACT THE REGIONAL HEARING CLERK.

THIS DOCUMENT WAS FILED IN THE REGIONAL HEARING CLERK'S OFFICE ON SEPTEMBER 12, 2006.